

112TH CONGRESS
1ST SESSION

S. 1452

To promote simplification and fairness in the administration and collection
of sales and use taxes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2011

Mr. DURBIN (for himself, Mr. JOHNSON of South Dakota, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote simplification and fairness in the administration
and collection of sales and use taxes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Main Street Fairness Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Consent of Congress.
- Sec. 3. Findings.
- Sec. 4. Authorization to require collection of sales and use taxes.
- Sec. 5. Determinations by governing board and judicial review of such determinations.

Sec. 6. Minimum simplification requirements.
 Sec. 7. Limitation.
 Sec. 8. Expedited judicial review.
 Sec. 9. Definitions.
 Sec. 10. Severability.
 Sec. 11. Sense of Congress on digital goods and services.

1 **SEC. 2. CONSENT OF CONGRESS.**

2 Congress consents to the Streamlined Sales and Use
 3 Tax Agreement.

4 **SEC. 3. FINDINGS.**

5 Congress makes the following findings:

6 (1) States should be encouraged to simplify
 7 their sales and use tax systems.

8 (2) As a matter of economic policy and basic
 9 fairness, similar sales transactions should be treated
 10 equally, without regard to the manner in which sales
 11 are transacted, whether in person, through the mail,
 12 over the telephone, on the Internet, or by other
 13 means.

14 (3) Congress may facilitate such equal taxation
 15 consistent with the United States Supreme Court's
 16 decision in *Quill Corp. v. North Dakota*.

17 (4) States that voluntarily and adequately sim-
 18 plify their tax systems should be authorized to cor-
 19 rect the present inequities in taxation through re-
 20 quiring sellers to collect taxes on sales of goods or
 21 services delivered in-state, without regard to the lo-
 22 cation of the seller.

1 (5) The States have experience, expertise, and
 2 a vital interest in the collection of sales and use
 3 taxes, and thus should take the lead in developing
 4 and implementing sales and use tax collection sys-
 5 tems that are fair, efficient, and non-discriminatory
 6 in their application and that will simplify the process
 7 for both sellers and buyers.

8 (6) Online consumer privacy is of paramount
 9 importance to the growth of electronic commerce
 10 and must be protected.

11 **SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF**
 12 **SALES AND USE TAXES.**

13 (a) GRANT OF AUTHORITY.—

14 (1) IN GENERAL.—Each Member State under
 15 the Streamlined Sales and Use Tax Agreement is
 16 authorized, subject to the requirements of this sec-
 17 tion, to require all sellers not qualifying for the
 18 small seller exception to collect and remit sales and
 19 use taxes with respect to remote sales sourced to
 20 that Member State under the Agreement.

21 (2) REQUIREMENTS FOR AUTHORITY.—The au-
 22 thorization provided under paragraph (1) shall be
 23 granted once all of the following have occurred:

24 (A) Ten States comprising at least 20 per-
 25 cent of the total population of all States impos-

1 ing a sales tax, as determined by the most re-
2 cent Federal census, have petitioned for mem-
3 bership and have become Member States under
4 the Agreement.

5 (B) The following necessary operational as-
6 pects of the Agreement have been implemented
7 by the Governing Board:

8 (i) Provider and system certification.

9 (ii) Setting of monetary allowance by
10 contract with providers.

11 (iii) Implementation of an online
12 multistate registration system.

13 (iv) Adoption of a standard form for
14 claiming exemptions electronically.

15 (v) Establishment of advisory coun-
16 cils.

17 (vi) Promulgation of rules and proce-
18 dures for dispute resolution.

19 (vii) Promulgation of rules and proce-
20 dures for audits.

21 (viii) Provisions for funding and staff-
22 ing the Governing Board.

23 (C) Each Member State has met the re-
24 quirements to provide and maintain the data-
25 bases for sales and use taxes and the taxability

1 matrix described in the Agreement, pursuant to
2 requirements of the Governing Board.

3 (3) LIMITATION OF AUTHORITY.—The author-
4 ization provided under paragraph (1)—

5 (A) shall be granted notwithstanding any
6 other provision of law; and

7 (B) is dependent upon the Agreement, as
8 amended, meeting the minimum simplification
9 requirements of section 6.

10 (b) TERMINATION OF AUTHORITY.—

11 (1) IN GENERAL.—The authorization provided
12 under subsection (a) shall terminate for all States
13 if—

14 (A) the requirements contained in sub-
15 section (a) cease to be satisfied; or

16 (B) any amendment adopted to the Agree-
17 ment after the date of the enactment of this
18 Act is inconsistent with the provisions of this
19 Act.

20 (2) LOSS OF MEMBER STATE STATUS.—The au-
21 thorization provided under subsection (a) shall ter-
22minate for a Member State, if such Member State
23 no longer meets the requirements for Member State
24 status under the terms of the Agreement or the pro-
25 visions of this Act.

1 (c) DETERMINATION OF STATUS.—

2 (1) IN GENERAL.—The Governing Board shall
 3 determine if Member States are in compliance with
 4 the requirements of subsections (a) and (b) and
 5 whether each Member State meets the minimum
 6 simplification requirements of section 6, and shall
 7 reevaluate such determination on an annual basis.

8 (2) COMPLIANCE DETERMINATION.—Upon the
 9 determination of the Governing Board that all the
 10 requirements of subsection (a) have been satisfied,
 11 the authority to require a seller to collect and remit
 12 sales and use taxes shall commence on the first day
 13 of a calendar quarter at least 6 months after the
 14 date the Governing Board makes its determination.

15 (3) NONCOMPLIANCE DETERMINATION.—Upon
 16 a final determination by the Governing Board that
 17 a Member State is not in compliance with the min-
 18 imum simplification requirements of section 6 or is
 19 otherwise not in compliance with the Agreement,
 20 that Member State shall lose its remote seller collec-
 21 tion authority on the earlier of—

22 (A) the date specified by the Governing
 23 Board; or

24 (B) the later of—

- 1 (i) the first day of January at least 2
 2 years after the Governing Board finally de-
 3 termined the State was not compliant; or
 4 (ii) the first day of a calendar quarter
 5 following the end of one full session of the
 6 State's legislature beginning after the Gov-
 7 erning Board finally determined the State
 8 was not compliant.

9 For purposes of this section, the terms "final
 10 determination" or "finally determined" shall
 11 mean that all appeals processes provided for in
 12 the Agreement have been exhausted or the time
 13 for pursuing such appeals has expired. An ac-
 14 tion before the Federal Court of Claims pursu-
 15 ant to section 5 shall not operate to stay a
 16 State's loss of collection authority.

17 (4) RESTORATION OF AUTHORITY.—Any Mem-
 18 ber State that loses its collection authority under
 19 this section must comply with all provisions of this
 20 section to have its remote seller collection authority
 21 restored.

22 **SEC. 5. DETERMINATIONS BY GOVERNING BOARD AND JU-**
 23 **DICIAL REVIEW OF SUCH DETERMINATIONS.**

24 (a) PETITION.—At any time after the Governing
 25 Board has made the determinations required under section

1 4(c), any person who may be affected by the Agreement
 2 may petition the Governing Board for a determination on
 3 any issue related to the implementation of the Agreement
 4 or on a Member State's compliance with this Act or the
 5 Agreement.

6 (b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any
 7 person who submits a petition under subsection (a) may
 8 bring an action against the Governing Board in the United
 9 States Court of Federal Claims for judicial review of the
 10 action of the Governing Board on that petition if—

11 (1) the petition relates to an issue of whether—

12 (A) a Member State has satisfied or con-
 13 tinues to satisfy the requirements for Member
 14 State status under the Agreement;

15 (B) the Governing Board has performed a
 16 nondiscretionary duty of the Governing Board
 17 under the Agreement;

18 (C) the Agreement—

19 (i) continues to satisfy the minimum
 20 simplification requirements of section 6; or

21 (ii) otherwise continues to be con-
 22 sistent with the provisions of this Act; or

23 (D) any other requirement of section 4 has
 24 been satisfied; and

1 (2) the petition is denied by the Governing
2 Board in whole or in part with respect to that issue,
3 or the Governing Board fails to act on the petition
4 with respect to that issue not later than the 6-month
5 period beginning on the day after the date on which
6 the petition was submitted.

7 (c) TIMING OF ACTION FOR REVIEW.—An action for
8 review under this section shall be initiated not later than
9 60 days after the denial of the petition by the Governing
10 Board, or, if the Governing Board fails to act on the peti-
11 tion, not later than 60 days after the end of the 6-month
12 period beginning on the day after the date on which the
13 petition was submitted.

14 (d) STANDARD OF REVIEW.—

15 (1) IN GENERAL.—In any action for review
16 under this section, the court shall set aside the ac-
17 tions, findings, and conclusions of the Governing
18 Board found to be arbitrary, capricious, an abuse of
19 discretion, or otherwise not in accordance with law.

20 (2) REMAND.—If the court sets aside any ac-
21 tion, finding, or conclusion of the Governing Board
22 under paragraph (1), the court shall remand the
23 case to the Governing Board for further action con-
24 sistent with the decision of the court.

1 (3) NONMONETARY RELIEF.—In connection
 2 with any remand under paragraph (2), the court
 3 may not award monetary relief, but may award de-
 4 claratory and injunctive relief.

5 (e) JURISDICTION.—

6 (1) GENERALLY.—Chapter 91 of title 28,
 7 United States Code, is amended by adding at the
 8 end the following new section:

9 **“SEC. 1510. JURISDICTION REGARDING THE STREAMLINED**
 10 **SALES AND USE TAX AGREEMENT.**

11 “The United States Court of Federal Claims shall
 12 have exclusive jurisdiction over actions for judicial review
 13 of determinations of the Governing Board of the Stream-
 14 lined Sales and Use Tax Agreement under the terms and
 15 conditions provided in section 5 of the Main Street Fair-
 16 ness Act.”.

17 (2) CONFORMING AMENDMENT TO TABLE OF
 18 SECTIONS.—The table of sections for chapter 91 of
 19 title 28, United States Code, is amended by adding
 20 at the end the following new item:

“1510. Jurisdiction regarding the streamlined sales and use tax agreement.”.

21 **SEC. 6. MINIMUM SIMPLIFICATION REQUIREMENTS.**

22 (a) IN GENERAL.—The minimum simplification re-
 23 quirements for the Agreement are as follows:

24 (1) A centralized, one-stop, multistate registra-
 25 tion system that a seller may elect to use to register

1 with the Member States, provided a seller may also
2 elect to register directly with a Member State, and
3 further provided that privacy and confidentiality
4 controls shall be placed on the multistate registra-
5 tion system so that it may not be used for any pur-
6 pose other than the administration of sales and use
7 taxes. Furthermore, no taxing authority within a
8 Member State or a Member State that has with-
9 drawn or been expelled from the Agreement may use
10 registration with the centralized registration system
11 for the purpose of, or as a factor in determining,
12 whether a seller has a nexus with that Member State
13 for any tax at any time.

14 (2) Uniform definitions of products and prod-
15 uct-based exemptions from which a Member State
16 may choose its individual tax base, provided, how-
17 ever, that all local jurisdictions in that Member
18 State with respect to which a tax is imposed or col-
19 lected, shall have a common tax base identical to the
20 State tax base of that Member State. A Member
21 State may enact product-based exemptions without
22 restriction if the Agreement does not have a defini-
23 tion for the product or for a term that includes the
24 product. A Member State shall relax the good faith
25 requirement for acceptance of exemption certificates

1 in accordance with section 317 of the Agreement, as
2 in effect on the date of the enactment of this Act.

3 (3) Uniform rules for sourcing and attributing
4 transactions to particular taxing jurisdictions.

5 (4) Uniform procedures for the certification of
6 service providers and software on which a seller may
7 elect to rely in order to determine Member State
8 sales and use tax rates and taxability.

9 (5) Uniform rules for bad debts and rounding.

10 (6) Uniform requirements for tax returns and
11 remittances.

12 (7) Consistent electronic filing and remittance
13 methods.

14 (8) Single, State-level administration of all
15 Member State and local sales and use taxes, includ-
16 ing a requirement for a State-level filing of tax re-
17 turns in each Member State.

18 (9) A provision requiring the elimination by
19 each Member State of caps and thresholds on the
20 application of sales and use tax rates and exemp-
21 tions based on value, provided that this limitation
22 does not apply to the items identified in sections
23 308C, 322, and 323 of the Agreement, as in effect
24 on the date of the enactment of this Act.

1 (10) A provision requiring each Member State
2 to complete a taxability matrix, as adopted by the
3 Governing Board. The matrix shall include informa-
4 tion regarding terms defined by the Agreement in
5 the Library of Definitions. The matrix shall also in-
6 clude, pursuant to the requirements of the Gov-
7 erning Board, information on use-, entity-, and
8 product-based exemptions.

9 (11) A provision requiring that each Member
10 State relieves a seller or service provider from liabil-
11 ity to that Member State and local jurisdiction for
12 collection of the incorrect amount of sales or use tax,
13 and relieves the purchaser from penalties stemming
14 from such liability, provided that collection of the
15 improper amount is the result of relying on informa-
16 tion provided by that Member State regarding tax
17 rates, boundaries, or taxing jurisdiction assignments,
18 or in the taxability matrix regarding terms defined
19 by the Agreement in the Library of Definitions.

20 (12) Audit procedures for sellers, including an
21 option under which a seller not qualifying for the
22 small business exception may request, by notifying
23 the Governing Board, to be subject to a single audit
24 on behalf of all Member States for sales and use

1 taxes. The Governing Board, in its discretion, may
2 authorize such a single audit.

3 (13)(A) Subject to subparagraphs (B), (C),
4 (D), and (E), a provision requiring that in order for
5 a Member State to require collection with respect to
6 remote sales under section 4, the Member State
7 shall provide compensation for expenses incurred by
8 a seller directly in administering, collecting, and re-
9 mitting sales and use taxes to that Member State.
10 Such compensation may vary in each Member State
11 as provided in the Agreement.

12 (B) Congress hereby finds that the compensa-
13 tion for expenses incurred by sellers required of
14 Member States under the terms of the Agreement,
15 as in effect on the enactment of this Act, is the min-
16 imum compensation necessary, when considered in
17 connection with the simplification requirements con-
18 tained in the Agreement on the date authority to re-
19 quire collection commences under section 4, to sat-
20 isfy the requirement under subparagraph (A) on
21 such date.

22 (C)(i) A provision requiring that the minimum
23 compensation required of a Member State under
24 subparagraph (A) may be modified as follows:

1 (I) Adjusted in relationship to changes in
2 the size of the small business exemption adopt-
3 ed by the Governing Board.

4 (II) Decreased as additional simplifications
5 and improvements in technology reduce collec-
6 tion costs.

7 (III) Increased if provisions of the Agree-
8 ment are adopted that increase collection costs.

9 (ii) Any such modification in the minimum re-
10 quired compensation must be based on an inde-
11 pendent review of the expenses incurred by sellers in
12 administering, collecting, and remitting sales and
13 use taxes and shall consider all changes impacting
14 such expenses and take into account and be propor-
15 tional to the increase or decrease in the expenses in-
16 curred by sellers in administering, collecting, and re-
17 mitting sales and use taxes.

18 (D) The compensation required by subpara-
19 graph (A) shall be provided pursuant to the imple-
20 mentation schedule set out in the Agreement. Noth-
21 ing in this Act shall prohibit a Member State from
22 providing compensation greater than the amount re-
23 quired by this Act or the Agreement or on a date
24 earlier than required by this Act or the Agreement.

1 (E) Compensation necessary to meet the re-
 2 quirement of subparagraph (A) may be provided to
 3 a seller or a third party service provider whom a
 4 seller has contracted with to perform the sales and
 5 use tax responsibilities of a seller.

6 (14) Appropriate protections for consumer pri-
 7 vacy.

8 (15) Governance procedures and mechanisms to
 9 ensure timely, consistent, and uniform implementa-
 10 tion and adherence to the principles of the stream-
 11 lined system and the terms of the Agreement.

12 (16) A uniform rule to establish a small seller
 13 exception to a requirement to collect authorized by
 14 this Act.

15 (17) Uniform rules and procedures for sales tax
 16 holidays.

17 (18) Uniform rules and procedures to address
 18 refunds and credits for sales taxes relating to cus-
 19 tomer returns, restocking fees, discounts and cou-
 20 pons, and rules to address allocations of shipping
 21 and handling and discounts applied to multiple item
 22 and multiple seller orders.

23 (b) REQUIREMENT TO PROVIDE SIMPLIFIED TAX
 24 SYSTEMS.—

1 (1) IN GENERAL.—The requirements of this
 2 section are intended to ensure that each Member
 3 State provides and maintains the necessary sim-
 4 plification to its sales and use tax system to warrant
 5 the collection authority granted to such Member
 6 State in section 4.

7 (2) REDUCTION OF ADMINISTRATIVE BUR-
 8 DENS.—The requirements of this section should be
 9 construed—

10 (A) to require each Member State to sub-
 11 stantially reduce the administrative burdens as-
 12 sociated with sales and use taxes; and

13 (B) as allowing each Member State to ex-
 14 ercise flexibility in how these requirements are
 15 satisfied.

16 (3) EXCEPTION.—In instances where exceptions
 17 to the requirements of this section can be exercised
 18 in a manner that does not materially increase the
 19 administrative burden on a seller obligated to collect
 20 or pay the taxes, such exceptions are permissible.

21 (c) NO REQUIREMENT TO EXEMPT FROM OR IMPOSE
 22 TAX.—Nothing in this Act or the Agreement shall require
 23 any Member State or any local taxing jurisdiction to ex-
 24 empt, or to impose a tax on any product, or to adopt any

1 particular type of tax, or to impose the same rate of tax
 2 as any other taxing jurisdiction.

3 **SEC. 7. LIMITATION.**

4 (a) IN GENERAL.—Nothing in this Act shall be con-
 5 strued as—

6 (1) subjecting a seller to franchise taxes, in-
 7 come taxes, or licensing requirements of a Member
 8 State or political subdivision thereof; or

9 (2) affecting the application of such taxes or re-
 10 quirements or enlarging or reducing the authority of
 11 any Member State to impose such taxes or require-
 12 ments.

13 (b) NO EFFECT ON NEXUS, ETC.—

14 (1) IN GENERAL.—No obligation imposed by
 15 virtue of the authority granted by section 4 shall be
 16 considered in determining whether a seller has a
 17 nexus with any Member State for any other tax pur-
 18 pose.

19 (2) PERMISSIBLE MEMBER STATE AUTHOR-
 20 ITY.—Except as provided in subsection (a), and in
 21 section 4, nothing in this Act permits or prohibits a
 22 Member State from—

23 (A) licensing or regulating any person;

24 (B) requiring any person to qualify to
 25 transact intrastate business;

1 (C) subjecting any person to State taxes
 2 not related to the sale of goods or services; or
 3 (D) exercising authority over matters of
 4 interstate commerce.

5 **SEC. 8. EXPEDITED JUDICIAL REVIEW.**

6 (a) **THREE-JUDGE DISTRICT COURT HEARING.**—
 7 Notwithstanding any other provision of law, any civil ac-
 8 tion challenging the constitutionality of this Act, or any
 9 provision thereof, shall be heard by a district court of 3
 10 judges convened pursuant to the provisions of section
 11 2284 of title 28, United States Code.

12 (b) **APPELLATE REVIEW.**—

13 (1) **IN GENERAL.**—Notwithstanding any other
 14 provision of law, an interlocutory or final judgment,
 15 decree, or order of the court of 3 judges in an action
 16 under subsection (a) holding this Act, or any provi-
 17 sion thereof, unconstitutional shall be reviewable as
 18 a matter of right by direct appeal to the United
 19 States Supreme Court.

20 (2) **THIRTY-DAY TIME LIMIT.**—Any appeal
 21 under paragraph (1) shall be filed not more than 30
 22 days after the date of entry of such judgment, de-
 23 cree, or order.

1 **SEC. 9. DEFINITIONS.**

2 For the purposes of this Act the following definitions
3 apply:

4 (1) **GOVERNING BOARD.**—The term “Governing
5 Board” means the governing board established by
6 the Streamlined Sales and Use Tax Agreement.

7 (2) **MEMBER STATE.**—The term “Member
8 State”—

9 (A) means a Member State as that term is
10 used under the Streamlined Sales and Use Tax
11 Agreement as in effect on the date of the enact-
12 ment of this Act; and

13 (B) does not include associate members
14 under the Agreement.

15 (3) **NONDISCRETIONARY DUTY OF THE GOV-**
16 **ERNING BOARD.**—The term “nondiscretionary duty
17 of the Governing Board” means any duty of the
18 Governing Board specified in the Agreement as a re-
19 quirement for action by use of the term “shall”,
20 “will”, or “is required to”.

21 (4) **PERSON.**—The term “person” means an in-
22 dividual, trust, estate, fiduciary, partnership, cor-
23 poration, limited liability company, or any other
24 legal entity, and includes a State or local govern-
25 ment.

1 (5) REMOTE SALE.—The term “remote sale”
2 means a sale of goods or services attributed to a
3 particular Member State with respect to which a
4 seller does not have adequate physical presence to
5 establish nexus under the law existing on the day be-
6 fore the date of the enactment of this Act so as to
7 allow such Member State to require, without regard
8 to the authority granted by this Act, the seller to
9 collect and remit taxes covered by this Act with re-
10 spect to such sale.

11 (6) REMOTE SELLER.—The term “remote sell-
12 er” means any seller who makes a remote sale.

13 (7) STATE.—The term “State” means each of
14 the several States, the District of Columbia, the
15 Commonwealth of Puerto Rico, Guam, American
16 Samoa, the United States Virgin Islands, the Com-
17 monwealth of the Northern Mariana Islands, and
18 any other territory or possession of the United
19 States.

20 (8) STREAMLINED SALES AND USE TAX AGREE-
21 MENT.—The term “Streamlined Sales and Use Tax
22 Agreement” (or “the Agreement”) means the
23 multistate agreement with that title adopted on No-
24 vember 12, 2002, as in effect on the date of the en-

1 actment of this Act and unless the context otherwise
2 indicates as further amended from time to time.

3 **SEC. 10. SEVERABILITY.**

4 If any provision of this Act, an amendment made by
5 this Act, or the application of such provision or amend-
6 ment to any person or circumstance is held to be unconsti-
7 tutional, the remainder of this Act, the amendments made
8 by this Act, and the application of the provisions of such
9 to any person or circumstance shall not be affected there-
10 by.

11 **SEC. 11. SENSE OF CONGRESS ON DIGITAL GOODS AND**
12 **SERVICES.**

13 It is the sense of Congress that each Member State
14 that is a party to the Agreement should work with other
15 Member States that are also parties to the Agreement to
16 prevent double taxation in situations where a foreign coun-
17 try has imposed a transaction tax on a digital good or
18 service.

○